



Senate

General Assembly

File No. 160

February Session, 2018

Substitute Senate Bill No. 257

Senate, April 3, 2018

The Committee on Aging reported through SEN. MCCRORY of the 2nd Dist. and SEN. KELLY of the 21st Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17a-405 of the 2018 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective from passage*):

4 (a) As used in this chapter:

5 (1) "State agency" means the [Office of Policy and Management]
6 Department of Rehabilitation Services.

7 (2) "Office" means the Office of the Long-Term Care Ombudsman
8 established in this section.

9 (3) "State Ombudsman" means the State Ombudsman established in
10 this section.

11 (4) "Assistant State Ombudsman" means the person appointed by
12 the State Ombudsman to assist the State Ombudsman in carrying out
13 the duties of the State Ombudsman pursuant to section 17a-408, as
14 amended by this act.

15 [(4)] (5) "Program" means the long-term care ombudsman program
16 [established in this section] administered by the Office of the Long-
17 Term Care Ombudsman.

18 [(5)] (6) "Representative" includes the Assistant State Ombudsman, a
19 regional ombudsman, a residents' advocate or an employee of the
20 Office of the Long-Term Care Ombudsman who is individually
21 designated by the State Ombudsman.

22 (7) "Recipient" means an individual receiving home and
23 community-based services who is sixty years of age or older.

24 [(6)] (8) "Resident" means an [older] individual who resides in or is a
25 patient in a long-term care facility who is sixty years of age or older.

26 [(7)] (9) "Long-term care facility" means any skilled nursing facility,
27 as defined in Section 1819(a) of the Social Security Act, (42 USC 1395i-
28 3(a)) any nursing facility, as defined in Section 1919(a) of the Social
29 Security Act, (42 USC 1396r(a)) a board and care facility, as defined in
30 Section 102(19) of the federal Older Americans Act, (42 USC 3002(19))
31 and for purposes of ombudsman program coverage, an institution
32 regulated by the state pursuant to Section 1616(e) of the Social Security
33 Act, (42 USC 1382e(e)) and any other adult care home similar to a
34 facility or nursing facility or board and care home.

35 [(8)] "Secretary" means the Secretary of the Office of Policy and
36 Management.]

37 (10) "Commissioner" means the Commissioner of Rehabilitation
38 Services.

39 [(9)] (11) "Applicant" means an [older] individual who has applied
40 for admission to a long-term care facility or for home and community-

41 based services.

42 (12) "Home and community-based services" means long-term care
43 provided in a home or community setting, or both, to a recipient.

44 (b) There is established an independent Office of the Long-Term
45 Care Ombudsman within the [Office of Policy and Management]
46 Department of Rehabilitation Services. The [Secretary of the Office of
47 Policy and Management] Commissioner of Rehabilitation Services
48 shall appoint a State Ombudsman who shall be selected from among
49 individuals with expertise and experience in the fields of long-term
50 care and advocacy to head the office and the State Ombudsman shall
51 appoint an Assistant State Ombudsman and assistant regional
52 ombudsmen. In the event the State Ombudsman [or an assistant
53 regional ombudsman] is unable to fulfill the duties of the office, the
54 [secretary] commissioner shall appoint an acting State Ombudsman.
55 [and] In the event the Assistant State Ombudsman or a regional
56 ombudsman is unable to fulfill the duties of the office, the State
57 Ombudsman shall appoint an acting [assistant] Assistant State
58 Ombudsman or an acting regional ombudsman.

59 (c) Notwithstanding the provisions of subsection (b) of this section,
60 on and after July 1, 1990, the positions of State Ombudsman and
61 regional ombudsmen shall be classified service positions. The State
62 Ombudsman and regional ombudsmen holding said positions on said
63 date shall continue to serve in their positions as if selected through
64 classified service procedures. As vacancies occur in such positions
65 thereafter, such vacancies shall be filled in accordance with classified
66 service procedures.

67 Sec. 2. Subsection (a) of section 17a-406 of the general statutes is
68 repealed and the following is substituted in lieu thereof (*Effective from*
69 *passage*):

70 (a) Residents' advocates shall be appointed by the State
71 Ombudsman, in consultation with the regional ombudsmen, for each
72 region in sufficient number to serve the residents of long-term care

73 facilities and recipients of home and community-based services within
74 such region. Such residents' advocates shall, if possible, be residents of
75 the region in which they will serve, and shall have demonstrated an
76 interest in the care of the elderly. Residents' advocates shall serve
77 without compensation but may be reimbursed for reasonable expenses
78 incurred in the performance of their duties, within available
79 appropriations.

80 Sec. 3. Section 17a-407 of the 2018 supplement to the general statutes
81 is repealed and the following is substituted in lieu thereof (*Effective*
82 *from passage*):

83 No person may perform any functions as a residents' advocate until
84 [the person has] having successfully completed a course of training
85 required by the State Ombudsman. Any residents' advocate who fails
86 to complete such a course within a reasonable time after appointment
87 may be removed by the State Ombudsman or the regional ombudsman
88 for the region in which such residents' advocate serves. The [Secretary
89 of the Office of Policy and Management] Commissioner of
90 Rehabilitation Services, after consultation with the State Ombudsman,
91 shall adopt regulations, in accordance with the provisions of chapter
92 54, to carry out the provisions of this section. Such regulations shall
93 include, but need not be limited to, the course of training required by
94 this [subsection] section.

95 Sec. 4. Section 17a-408 of the general statutes is repealed and the
96 following is substituted in lieu thereof (*Effective from passage*):

97 (a) The State Ombudsman shall establish and operate ombudsman
98 programs in this state pursuant to Sections 711 to 713, inclusive, of the
99 federal Older Americans Act of 1965, as amended from time to time.

100 (b) The State Ombudsman shall serve on a full-time basis, and shall,
101 to the extent permissible under federal law and within available
102 appropriations, personally or through representatives of the office:

103 (1) Identify, investigate and resolve complaints that:

104 (A) Are made by, or on behalf of, residents and recipients or, as to
105 complaints involving the application for (i) admission to a long-term
106 care facility, or (ii) home and community-based services, by or on
107 behalf of applicants; and

108 (B) Relate to action, inaction or decisions that may adversely affect
109 the health, safety, welfare or rights of the residents and recipients,
110 including the welfare and rights of the residents and recipients with
111 respect to the appointment and activities of guardians and
112 representative payees, of (i) providers or representatives of providers
113 of long-term care services, including home and community-based
114 services, (ii) public agencies, or (iii) health and social service agencies;

115 (2) Provide services to protect the health, safety, welfare and rights
116 of the residents and recipients;

117 (3) Inform the residents and recipients about means of obtaining
118 services provided by providers or agencies described in subparagraph
119 (B) of subdivision (1) of this subsection or services described in
120 subdivision (2) of this subsection;

121 (4) Ensure that the residents, recipients and [, as to issues involving
122 applications for admission to long-term care facilities,] applicants have
123 regular and timely access to the services provided through the office
124 and that the residents, recipients, applicants and other complainants
125 receive timely responses from representatives of the office to
126 complaints;

127 (5) Represent the interests of the residents, recipients and [of]
128 applicants in relation to issues concerning applications [to long-term
129 care facilities,] before governmental agencies and seek administrative,
130 legal and other remedies to protect the health, safety, welfare and
131 rights of the residents, recipients and applicants;

132 (6) Provide administrative and technical assistance to
133 representatives and training in areas including, but not limited to,
134 Alzheimer's disease and dementia symptoms and care;

135 (7) (A) Analyze, comment on and monitor the development and
136 implementation of federal, state and local laws, regulations, and other
137 governmental policies and actions that pertain to the health, safety,
138 welfare and rights of the residents and recipients with respect to the
139 adequacy of long-term care facilities and home and community-based
140 services in this state and to the rights of applicants in relation to
141 applications to long-term care facilities and for home and community-
142 based services;

143 (B) Recommend any changes in such laws, regulations, policies and
144 actions as the office determines to be appropriate; and

145 (C) Facilitate public comment on such laws, regulations, policies
146 and actions;

147 (8) Advocate for:

148 (A) Any changes in federal, state and local laws, regulations and
149 other governmental policies and actions that pertain to the health,
150 safety, welfare and rights of residents and recipients with respect to
151 the adequacy of long-term care facilities and home and community-
152 based services in this state and to the health, safety, welfare and rights
153 of applicants [which] that the State Ombudsman determines to be
154 appropriate;

155 (B) Appropriate action by groups or agencies with jurisdictional
156 authority to deal with problems affecting individual residents and
157 recipients and the general resident population and applicants in
158 relation to issues concerning applications to long-term care facilities
159 and for home and community-based services; and

160 (C) The enactment of legislative recommendations by the General
161 Assembly and of regulatory recommendations by commissioners of
162 Connecticut state agencies;

163 (9) (A) Provide for training representatives of the office;

164 (B) Promote the development of citizen organizations to participate

165 in the program; and

166 (C) Provide technical support for the development of resident and
167 family councils to protect the well-being and rights of residents;

168 (10) Coordinate ombudsman services with the protection and
169 advocacy systems for individuals with developmental disabilities and
170 mental illnesses established under (A) Part A of the [Development]
171 Developmental Disabilities Assistance and Bill of Rights Act (42 USC
172 6001, et seq.), and (B) The Protection and Advocacy for Mentally Ill
173 Individuals Act of 1986 (42 USC 10801 et seq.);

174 (11) Coordinate, to the greatest extent possible, ombudsman services
175 with legal assistance provided under Section 306(a)(2)(C) of the federal
176 Older Americans Act of 1965, (42 USC 3026(a)(2)(C)) as amended from
177 time to time, through the adoption of memoranda of understanding
178 and other means;

179 (12) Create, and periodically update as needed, a training manual
180 for nursing home facilities identified in section 19a-522c that provides
181 guidance on structuring and implementing the training required by
182 said section;

183 (13) Provide services described in this subsection, to residents under
184 age sixty living in a long-term care facility, if (A) a majority of the
185 residents of the facility where the younger person resides are over age
186 sixty and (B) such services do not weaken or decrease service to [older]
187 individuals covered under this chapter; and

188 [(14) Implement and administer, within available appropriations, a
189 pilot program that serves home and community-based care recipients
190 in Hartford County; and]

191 [(15)] (14) Carry out such other activities and duties as may be
192 required under federal law.

193 Sec. 5. Section 17a-409 of the general statutes is repealed and the
194 following is substituted in lieu thereof (*Effective from passage*):

195 The State Ombudsman is authorized to investigate and make
196 reports and recommendations concerning any act or the failure to act
197 by any agency, official or public employee, with respect to their
198 responsibilities and duties in connection with long-term care facilities
199 or home and community-based services, except the courts and their
200 personnel, legislative bodies and their personnel and the chief
201 executive of the state and the chief executive's personal staff and all
202 elected officials.

203 Sec. 6. Section 17a-410 of the general statutes is repealed and the
204 following is substituted in lieu thereof (*Effective from passage*):

205 The regional ombudsmen shall, in accordance with the policies and
206 procedures established by the Office of the Long-Term Care
207 Ombudsman and within available appropriations:

208 (1) Provide services to protect the health, safety, welfare and rights
209 of residents and recipients;

210 (2) Ensure that residents and recipients in service areas have regular
211 timely access to representatives of the program and timely responses
212 to complaints and requests for assistance;

213 (3) Identify, investigate and resolve complaints made by or on
214 behalf of residents and recipients that relate to action, inaction or
215 decisions that may adversely affect [the] their health, safety, welfare or
216 rights [of the residents] or by, or on behalf of, applicants in relation to
217 issues concerning applications for admission to long-term care
218 facilities or for home and community-based services;

219 (4) Represent the interests of residents, recipients and applicants, in
220 relation to their applications [to long-term care facilities,] for admission
221 to long-term care facilities or for home and community-based services
222 before government agencies and seek administrative, legal and other
223 remedies to protect the health, safety, welfare and rights of the
224 residents, recipients and applicants;

225 (5) (A) Review and, if necessary, comment on any existing and

226 proposed laws, regulations and other government policies and actions
227 that pertain to the rights and well-being of residents, recipients and
228 applicants in relation to their applications, [to long-term care facilities,]
229 and (B) facilitate the ability of the public to comment on the laws,
230 regulations, policies and actions;

231 (6) Support the development of resident and family councils; and

232 (7) Carry out other activities that the State Ombudsman determines
233 to be appropriate.

234 Sec. 7. Subsection (c) of section 17a-411 of the 2018 supplement to
235 the general statutes is repealed and the following is substituted in lieu
236 thereof (*Effective from passage*):

237 (c) The Commissioner of [Social Services] Rehabilitation Services
238 shall have authority to seek funding for the purposes contained in this
239 section from public and private sources, including, but not limited to,
240 any federal or state funded programs.

241 Sec. 8. Section 17a-414 of the general statutes is repealed and the
242 following is substituted in lieu thereof (*Effective from passage*):

243 (a) The state agency shall, within available appropriations, ensure
244 that:

245 (1) Adequate legal counsel is available and is able, without conflict
246 of interest, to: (A) Provide advice and consultation needed to protect
247 the health, safety, welfare and rights of residents, recipients and
248 applicants in relation to their applications; [to long-term care facilities;]
249 and (B) assist the [ombudsman] State Ombudsman and representatives
250 of the office in the performance of the official duties of the
251 [ombudsman] State Ombudsman and representatives; and

252 (2) Administrative, legal and other appropriate remedies are
253 pursued on behalf of residents, recipients and applicants in relation to
254 their applications. [to long-term care facilities.]

255 (b) The Assistant State Ombudsman, regional ombudsmen and
256 residents' advocates shall be considered state employees under section
257 4-141 for the purposes of any civil action for damages on account of
258 any act or omission that is not wanton, wilful or malicious and that is
259 within the scope of employment or duties under sections 17a-405 to
260 17a-417, inclusive, as amended by this act, 19a-531 and 19a-532.

261 Sec. 9. Section 17a-415 of the general statutes is repealed and the
262 following is substituted in lieu thereof (*Effective from passage*):

263 (a) The [ombudsman] State Ombudsman, Assistant State
264 Ombudsman, regional ombudsmen and representatives of the office
265 shall have:

266 (1) Access to long-term care facilities and residents;

267 (2) Appropriate access to review the medical and social records of a
268 resident or recipient, if (A) the representative has the permission of the
269 resident, recipient or the legal representative of the resident or
270 recipient, (B) the resident or recipient is unable to consent to the review
271 and has no legal representative, or (C) access to the records is
272 necessary to investigate a complaint and a legal guardian of the
273 resident or recipient refuses to give permission, a representative of the
274 office has reasonable cause to believe that the guardian is not acting in
275 the best interests of the resident or recipient, and the representative
276 obtains the approval of the [ombudsman] State Ombudsman;

277 (3) Access to the administrative records, policies and documents, to
278 which the residents have, or the general public has access, of long-term
279 care facilities; and

280 (4) Access to and, on request, copies of all licensing and certification
281 records maintained by the state with respect to long-term care facilities
282 and providers of home and community-based services.

283 (b) Any person or entity who wilfully interferes with
284 representatives of the office in the performance of the official duties of
285 the representatives, or any long-term care facility or other entity which

286 retaliates or exacts reprisals with respect to any resident, recipient,
287 employee or other person for filing a complaint with, providing
288 information to, or otherwise cooperating with any representative of the
289 office, or long-term care facility which refuses to permit the State
290 Ombudsman, [or] Assistant State Ombudsman, any regional
291 ombudsman or any residents' advocate entry into such facility or
292 refuses to cooperate with the State Ombudsman, Assistant State
293 Ombudsman or any regional ombudsman or any residents' advocate
294 in the carrying out of [their] his or her mandated duties and
295 responsibilities enumerated under sections 17a-405 to 17a-417,
296 inclusive, as amended by this act, 19a-531 and 19a-532 or refuses to
297 permit [residents] any resident or recipient or staff to communicate
298 freely with the State Ombudsman, [or] Assistant State Ombudsman,
299 any regional ombudsman or any residents' advocate, shall be subject to
300 the penalty prescribed for a class B violation under section 19a-527.

301 (c) In carrying out the duties enumerated in sections 17a-405 to 17a-
302 417, inclusive, as amended by this act, 19a-531 and 19a-532, the State
303 Ombudsman, the Assistant State Ombudsman, the regional
304 ombudsmen and the residents' advocates shall have access to all
305 relevant public records, except that records which are confidential to a
306 resident or recipient shall only be divulged with the written consent of
307 the resident or recipient.

308 (d) In the performance of the duties and responsibilities enumerated
309 under sections 17a-405 to 17a-417, inclusive, as amended by this act,
310 19a-531 and 19a-532, the State Ombudsman, the Assistant State
311 Ombudsman, the regional ombudsmen and the residents' advocates
312 may utilize any other state department, agency or commission, or any
313 other public or private agencies, groups or individuals who are
314 appropriate and who may be available.

315 Sec. 10. Section 17a-416 of the 2018 supplement to the general
316 statutes is repealed and the following is substituted in lieu thereof
317 (*Effective from passage*):

318 The [Secretary of the Office of Policy and Management]

319 Commissioner of Rehabilitation Services, after consultation with the
320 State Ombudsman, shall adopt regulations in accordance with the
321 provisions of chapter 54, to carry out the provisions of sections 17a-405
322 to 17a-417, inclusive, as amended by this act, 19a-531 and 19a-532.

323 Sec. 11. Section 17a-417 of the 2018 supplement to the general
324 statutes is repealed and the following is substituted in lieu thereof
325 (*Effective from passage*):

326 The [Secretary of the Office of Policy and Management]
327 Commissioner of Rehabilitation Services shall require the State
328 Ombudsman to, within available appropriations:

329 (1) Prepare an annual report:

330 (A) Describing the activities carried out by the office in the year for
331 which the report is prepared;

332 (B) Containing and analyzing the data collected under section 17a-
333 418, as amended by this act;

334 (C) Evaluating the problems experienced by and the complaints
335 made by or on behalf of residents and recipients;

336 (D) Containing recommendations for (i) improving the quality of
337 the care and life of the residents and recipients, and (ii) protecting the
338 health, safety, welfare and rights of the residents and recipients;

339 (E) (i) Analyzing the success of the program, including success in
340 providing services to residents [of long-term care facilities] and
341 recipients; and (ii) identifying barriers that prevent the optimal
342 operation of the program; and

343 (F) Providing policy, regulatory and legislative recommendations to
344 solve identified problems, to resolve the complaints, to improve the
345 quality of the care and life of residents and recipients, to protect [the]
346 their health, safety, welfare and rights [of residents] and to remove the
347 barriers that prevent the optimal operation of the program.

348 (2) Analyze, comment on and monitor the development and
349 implementation of federal, state and local laws, regulations and other
350 government policies and actions that pertain to long-term care facilities
351 and home and community-based services, and to the health, safety,
352 welfare and rights of residents and recipients in the state, and
353 recommend any changes in such laws, regulations and policies as the
354 office determines to be appropriate.

355 (3) (A) Provide such information as the office determines to be
356 necessary to public and private agencies, legislators and other persons,
357 regarding (i) the problems and concerns of [older individuals residing
358 in long-term care facilities] residents and recipients; and (ii)
359 recommendations related to the problems and concerns; and (B) make
360 available to the public and submit to the federal assistant secretary for
361 aging, the Governor, the General Assembly, the Department of Public
362 Health and other appropriate governmental entities, each report
363 prepared under subdivision (1) of this section.

364 Sec. 12. Section 17a-418 of the general statutes is repealed and the
365 following is substituted in lieu thereof (*Effective from passage*):

366 The state agency shall establish a state-wide uniform system to: (1)
367 Collect and analyze data relating to complaints and conditions in long-
368 term care facilities and, [to residents] within available appropriations,
369 complaints relating to services provided to recipients for the purpose
370 of identifying and resolving significant problems; and (2) submit the
371 data, on a regular basis to: (A) The Department of Public Health; (B)
372 other state and federal entities that the State Ombudsman determines
373 to be appropriate; and (C) the National Ombudsman Resource Center,
374 established in Section 202(a)(21) of the federal Older Americans Act of
375 1965, as amended from time to time.

376 Sec. 13. Section 17a-419 of the general statutes is repealed and the
377 following is substituted in lieu thereof (*Effective from passage*):

378 The state agency shall:

379 (1) Provide that the files and records maintained by the program
380 may be disclosed only at the discretion of the State Ombudsman or the
381 person designated by the ombudsman to disclose the files and records;
382 and

383 (2) Prohibit the disclosure of the identity of any complainant, [or]
384 resident or recipient with respect to whom the office maintains such
385 files or records unless (A) the complainant, [or] resident or recipient, or
386 the legal representative of the complainant, [or] resident or recipient,
387 consents to the disclosure and the consent is given in writing; (B) (i) the
388 complainant, [or] resident or recipient gives consent orally; and (ii) the
389 consent is documented contemporaneously in a writing made by a
390 representative of the office in accordance with such requirements as
391 the state agency shall establish; or (iii) the disclosure is required by
392 court order.

393 Sec. 14. Subdivision (3) of section 17a-421 of the general statutes is
394 repealed and the following is substituted in lieu thereof (*Effective from*
395 *passage*):

396 (3) Ensure that the State Ombudsman: (A) Does not have a direct
397 involvement in the licensing or certification of a long-term care facility
398 or of a provider of a long-term care service, including a home and
399 community-based service; (B) does not have an ownership or
400 investment interest, represented by equity, debt or other financial
401 relationship, in a long-term care facility or a long-term care service,
402 including a home and community-based service; (C) is not employed
403 by, or participating in the management of, a long-term care facility or a
404 home and community-based service; and (D) does not receive, or have
405 the right to receive, directly or indirectly, remuneration, in cash or in
406 kind, under a compensation arrangement with an owner or operator of
407 a long-term care facility or a home and community-based service; and

408 Sec. 15. Section 17a-420 of the general statutes is repealed and the
409 following is substituted in lieu thereof (*Effective October 1, 2018*):

410 In planning and operating the program, the state agency, in

411 consultation with the [ombudsman] State Ombudsman, shall consider
 412 the views of area agencies on aging, older individuals and providers of
 413 long-term care.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	17a-405
Sec. 2	<i>from passage</i>	17a-406(a)
Sec. 3	<i>from passage</i>	17a-407
Sec. 4	<i>from passage</i>	17a-408
Sec. 5	<i>from passage</i>	17a-409
Sec. 6	<i>from passage</i>	17a-410
Sec. 7	<i>from passage</i>	17a-411(c)
Sec. 8	<i>from passage</i>	17a-414
Sec. 9	<i>from passage</i>	17a-415
Sec. 10	<i>from passage</i>	17a-416
Sec. 11	<i>from passage</i>	17a-417
Sec. 12	<i>from passage</i>	17a-418
Sec. 13	<i>from passage</i>	17a-419
Sec. 14	<i>from passage</i>	17a-421(3)
Sec. 15	<i>October 1, 2018</i>	17a-420

Statement of Legislative Commissioners:

In Section 2(a) "residents of" was added for consistency, in Section 3, "subsection" was changed to "[subsection] section" for accuracy, in Section 6(3), reference to "home and community-based services" was added for consistency and Section 15 was added for consistency with the provisions of Sections 1 to 14, inclusive.

AGE *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$
Rehabilitation Services, Dept.	GF - Cost	207,300	276,400
State Comptroller - Fringe Benefits ¹	GF - Cost	75,312	100,416

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill establishes a new position of Assistant State Ombudsman and expands the duties of the Office of the Long-Term Care Ombudsman² to include oversight of home and community based services.

It is anticipated that these changes will require at least four new positions at the State Unit on Aging in the Department of Rehabilitation Services, at a total state cost of \$282,612 in FY 19 (partial year) and \$376,816 in FY 20 (annualized). These positions include the new assistant position (with an estimated salary of \$77,200) and three new regional ombudsmen (with an estimated salary of \$66,400) to carry out the expanded oversight of home and community based

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.33% of payroll in FY 19 and FY 20.

² The Long-Term Care Ombudsman program in the State Unit on Aging is currently under the Department of Rehabilitation Services through a Memorandum of Agreement.

services.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Administrative Services website

OLR Bill Analysis**SB 257*****AN ACT CONCERNING THE OFFICE OF THE LONG-TERM CARE OMBUDSMAN.*****SUMMARY**

This bill transfers the Office of the Long-Term Care Ombudsman from the Office of Policy and Management (OPM) to the Department of Rehabilitative Services (DORS). It also expands the Long-Term Care Ombudsman Program's (LTCOP) oversight to include home and community-based services recipients. The bill defines "home and community-based services" as long-term care provided to an individual age 60 or older in a home or community setting, or both. By law, the Office of the Long-Term Care Ombudsman administers LTCOP and currently oversees residents in nursing homes, residential care homes, and assisted living facilities (i.e., long-term care facilities).

Among other things, the bill:

1. expands the duties the state ombudsman and regional ombudsman must perform to cover recipients of, and applicants for, home and community-based services;
2. extends the state ombudsman's investigative authority to home and community-based services;
3. gives the ombudsman or her representatives the same access to home and community-based services records that she currently has with respect to long-term care facility records;
4. applies the same civil penalty of up to \$10,000 to certain actions concerning home and community-based services and their recipients as currently applies to long-term care facilities and residents;

5. requires the ombudsman to include certain information about home and community-based services activities in her annual report;
6. expands the uniform data collection system to include data and analysis relating to complaints and conditions of home and community-based services;
7. requires DORS to extend certain disclosure and conflict of interest provisions to the state ombudsman regarding home and community-based services; and
8. requires DORS to ensure the provision of legal counsel to recipients of such services.

The bill creates the position of assistant state ombudsman to assist the state ombudsman in carrying out her duties. It requires the state ombudsman to appoint (1) the assistant state ombudsman and (2) someone to act for the assistant whenever he or she cannot perform the duties of the office.

The bill also (1) repeals a LTCOP home and community-based pilot program in Hartford County and (2) makes minor technical and conforming changes.

EFFECTIVE DATE: Upon passage, except for a technical change which takes effect October 1, 2018 (§ 15).

§§ 2-6 & 8 — OMBUDSMAN OVERSIGHT OF HOME AND COMMUNITY-BASED SERVICES

State Ombudsman's Duties (§§ 2-4 & 6)

By law, state and regional ombudsmen must perform specific duties concerning residents and applicants of long-term care facilities. Under the bill, they must perform these duties within available appropriations and, in the case of the state ombudsman, to the extent permissible under federal law. The bill also expands these duties to (1) incorporate an assistant state ombudsman and (2) cover recipients of, and applicants for, home and community-based services. Specifically,

the state ombudsman, or her representatives, must:

1. identify, investigate, and resolve complaints made by, or on behalf of, home and community-based services recipients and applicants that relate to action, inaction, or decisions that may adversely affect the recipients' health, safety, welfare, or rights, including their welfare and rights with respect to the appointment and activities of guardians and certain payees;
2. provide services to protect the health, safety, welfare, and rights of home and community-based services recipients;
3. inform recipients and applicants about how to obtain services provided by LTCOP, public agencies, and health and social services agencies; and
4. ensure that (a) recipients and applicants have regular and timely access to the office's services and (b) LTCOP responds to their complaints in a timely way.

The state ombudsman, or her representatives, must also represent home and community-based services recipients' interests before governmental agencies and seek administrative, legal, and other remedies to protect their health, safety, welfare, and rights. This includes, among other things:

1. analyzing and monitoring the development and implementation of federal, state, and local laws, regulations, policies, and actions that pertain to the health, safety, welfare, and rights of home and community-based services recipients and applicants;
2. commenting, facilitating public comment on, and recommending changes to such laws, regulations, and policies;
3. advocating for changes in federal, state, and local laws, regulations, policies, and actions pertaining to recipients' and applicants' health, safety, welfare, and rights with respect to the

adequacy of home and community-based services and anything else the ombudsman determines appropriate;

4. advocating for appropriate action by groups or agencies with jurisdiction to address problems affecting home and community-based services recipients and applicants; and
5. advocating for the enactment of legislative or regulatory recommendations.

By law, the state ombudsman appoints, in consultation with regional ombudsmen, residents' advocates in sufficient number to serve each region's residents of long-term care facilities. The bill requires them to also appoint residents' advocates to each region sufficient to serve its recipients of home and community-based services. Residents' advocates are volunteers with demonstrated interest in elder care who, if possible, live in the region they will serve.

Investigative Authority (§ 5)

Existing law authorizes the state ombudsman to investigate, report on, and make recommendations about an agency's, official's, or public employee's act or failure to act with respect to responsibilities and duties connected with long-term care facilities. The bill extends this authorization to home and community-based services.

By law, the state ombudsman's authority does not extend to (1) the courts and court personnel, (2) legislative bodies and personnel, (3) the state's chief executive and his or her personal staff, and (4) all elected officials.

Regional Ombudsman's Duties (§ 6)

The bill similarly expands the duties of regional ombudsmen to include recipients of home and community-based services. Under the bill, regional ombudsmen must:

1. protect the health, safety, welfare, and rights of home and community-based services recipients;

2. ensure recipients have timely access to LTCOP representatives and receive timely responses to complaints and assistance requests;
3. identify, investigate, and resolve certain complaints made by or on recipients' behalf;
4. represent recipients' interests before government agencies; and
5. review and comment on, if necessary, any existing and proposed laws, regulations, policies, and actions pertaining to the rights and well-being of home and community-based services recipients or applicants.

Existing law requires regional ombudsmen to do this for long-term care facility residents.

Records Access (§ 9)

Existing law gives the state ombudsman and her representatives access to long-term care facilities and residents and appropriate access to certain medical, social, and administrative records and documents to carry out the office's duties, including investigating complaints. The bill extends such access to the records of home and community-based services recipients.

As under current law, the state ombudsman may access medical and social records if:

1. the resident or recipient or his or her legal representative consents;
2. the resident or recipient is unable to consent and has no legal representative; or
3. access is necessary to investigate a complaint, the resident's or recipient's legal guardian refuses permission, and an ombudsman's office representative has reasonable cause to believe the guardian is not acting in the resident's or recipient's

best interest and obtains the ombudsman's approval.

The bill also extends the ombudsman's current records access to include (1) licensing and certification records the state keeps on home and community-based services providers and (2) all relevant public records except confidential records that require an individual's written consent before being divulged.

Penalty for Interfering (§ 9)

The bill applies the same civil penalty of up to \$10,000 to certain actions concerning home and community-based services and their recipients that applies by law to long-term care facilities and residents. Specifically, the penalty applies to any:

1. person or entity willfully interfering with ombudsman office representatives in the performance of their official duties;
2. entity retaliating or exacting reprisals against a home and community-based services recipient for filing a complaint with, providing information to, or otherwise cooperating with any office representative; and
3. provider (a) refusing to cooperate with an ombudsman's office representative or (b) refusing to permit service recipients or staff to communicate freely with the ombudsman's office.

By law, the penalty also applies to long-term care facilities that refuse entry to an ombudsman's office representative.

§§ 8 & 9 — ASSISTANT OMBUDSMAN'S LIABILITY

The bill specifies that the assistant ombudsman has the same immunity from personal liability as other state employees in civil actions for damages on account of acts or omissions while performing their duties unless such acts are wanton, willful, or malicious.

The bill also extends to the assistant ombudsman authorization to use any other state department, agency, commission, or any other appropriate and available public or private agencies, groups, or

individuals to carry out his or her duties.

By law, the state ombudsman, regional ombudsmen, and residents' advocates have the same (1) immunity from personal liability and (2) authorization to use additional resources.

§§ 8, 11-14 — DEPARTMENT OF REHABILITATIVE SERVICES

Legal Counsel (§ 8)

The bill requires DORS, within available appropriations, to ensure that:

1. adequate legal counsel is available, without conflict of interest, to provide advice and consultation necessary to protect the health, safety, welfare, and rights of home and community-based services recipients and applicants and
2. administrative, legal, and other appropriate remedies are pursued on behalf of home and community-based services recipients and applicants.

By law, SDA must ensure the same with respect to long-term care residents and applicants.

State Ombudsman's Annual Report (§ 11)

The bill requires DORS, instead of OPM, to require the state ombudsman to prepare an annual report that, among other things, describes the office's activities, evaluates residents' problems and complaints, and makes certain recommendations. The bill requires the ombudsman to (1) complete the report within available appropriations and (2) expand the report's scope to include information about home and community-based services recipients. As it applies to such recipients, the report must:

1. contain and analyze data collected on home and community-based services recipients;
2. evaluate their problems, experiences, and complaints;

3. contain recommendations for (a) improving their quality of care and life and (b) protecting their health, safety, welfare, and rights;
4. analyze LTCOP's success and identify any program barriers;
5. provide policy, regulatory, and legislative recommendations to (a) solve identified problems; (b) resolve complaints; (c) improve recipients' quality of care and life and protect their health, safety, welfare, and rights; and (d) remove barriers that prevent program optimization;
6. analyze, comment on, and monitor federal, state, and local laws and regulations pertaining to home and community-based services and recommend changes in them as the ombudsman's office determines appropriate; and
7. provide information the ombudsman's office determines to be necessary to public and private agencies, legislators, and others about the problems and concerns of older individuals receiving home and community-based care and related recommendations.

By law, the ombudsman must (1) make the report available to the public and (2) submit it to the federal assistant secretary for aging, the governor, the General Assembly, the Department of Public Health (DPH), and other appropriate government agencies.

Information Collection and Analysis (§ 12)

The bill requires DORS, instead of OPM, to establish a statewide uniform data collection system and, within available appropriations, expand it to include data and analysis relating to complaints and conditions of home and community-based services. As under current law, DORS must also collect, analyze, and regularly submit data relating to complaints and conditions in long-term care facilities to (1) DPH, (2) other state and federal entities that the state ombudsman determines to be appropriate, and (3) the National Ombudsman

Resource Center.

Disclosure (§ 13)

The bill requires DORS instead of OPM to prohibit, with respect to any records or files the ombudsman's office maintains, identifying a complainant or resident of a long-term care facility without the individual's or his or her representative's consent unless ordered by a court. The bill extends this confidentiality to include complainants or recipients of home or community-based services.

Conflict of Interest (§ 14)

The bill requires DORS to ensure the state ombudsman:

1. does not have direct involvement in the licensing or certification of, or any financial interest in, home and community-based services;
2. is not employed by or participating in the management of any home and community-based service provider; and
3. does not receive or have a right to receive compensation from any home and community-based service provider.

The same conflict of interest provisions apply to the state ombudsman and long-term care facilities by law.

BACKGROUND***Related Bills***

sSB 251 and sSB 309, favorably reported by the Human Services and Aging committees, respectively, also transfer the Office of the Long-Term Care Ombudsman from OPM to DORS.

COMMITTEE ACTION

Aging Committee

Joint Favorable

Yea 12 Nay 0 (03/15/2018)